IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4612 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABHESING CHHAGANBHAI KOLI PATEL - Appellant(s)
Versus
PRATAPBHAI RAMABHAI RATHWA & 4 - Defendant(s)

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Appearance :
MR SK BUKHARI for Appellant(s) : 1,
None for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 13/04/2007

ORAL JUDGMENT

1. The short facts of the case appear to be that the appellant, while travelling in ST Bus No.GJ-18 V

1009 for Chhotaudepur at about 8.15 a.m., near Village Kevadi, one tempo bearing No.GJ-7 X 1960 dashed with the bus and the appellant sustained injury on the thigh of the right leg and also below the knee. The appellant had undergone treatment for 47 days in the hospital. The claim petition was filed before the Tribunal. The Tribunal after adjudication passed the award directing to pay a compensation of Rs.57,000/- together with interest at the rate of 9% and the proportionate cost and it is under these circumstances, the present appeal.

2. Heard Mr.Bukhari, learned Counsel for the appellant.

3. The first contention raised by Mr.Bukhari is that the income of the claimant was wrongly assessed by the Tribunal at Rs.2,000/-. If the said contention is examined, it appears that as per the statement on oath, the income of the claimant was Rs.2,100/-. As against the same, if the Tribunal has assessed Rs.2,000/- per month, such cannot be said to be an error on the part of the Tribunal, since the income even otherwise also in normal circumstances is to be considered by

taking the proximity of the figure.

4. Mr.Bukhari, learned Counsel appearing for the appellant, next contended that the disability was wrongly assessed as that of 10% as against the certificate of 20% and, therefore, there is an error on the part of the Tribunal.

5. Such contention also cannot be accepted for the simple reason that a joint purshis was filed before the Tribunal by the learned Counsel appearing for both the sides, treating the disability as that of 10% and, therefore, the appellant cannot be allowed to raise the contention contrary to the declaration made before the Tribunal. If the Tribunal has acted upon such declaration, it cannot be said that any error is committed by the Tribunal.

6. In the result, the appeal is meritless. Hence, dismissed.

13.4.2007 **(Jayant Patel, J.)**

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